United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 20-1538**
	)	**Issued: December 27, 2022**
DEPARTMENT OF VETERANS AFFAIRS, WEST LOS ANGELES VA MEDICAL CENTER, Los Angeles, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 17, 2020 appellant filed a timely appeal from a June 22, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted January 3, 2017 employment incident.

FACTUAL HISTORY

On March 22, 2017 appellant, then a 72-year-old program support assistant, filed a traumatic injury claim (Form CA-1) alleging that at 9:15 a.m. on January 3, 2017 he sustained

[1] 5 U.S.C. § 8101 *et seq*.

injuries to the right side of his body while in the performance of duty. He explained that he walked into his office with folders in his left hand and his keys in his right hand when his keys fell to the floor. When appellant bent down to pick up his keys, he lost his balance and fell on the floor, landing on the right side of his body and rolling onto his back. He reported experiencing pain and stiffness of the muscles of his right shoulder, hand, lower back, hip and leg, as well as his left hand and left thigh. Appellant retired from federal service the same day on January 3, 2017.

In a March 23, 2017 statement, appellant explained that he was not aware that he was injured as a result of his January 3, 2017 fall and was not aware that the fall exacerbated his injury until his doctors recently informed him.

In an April 7, 2017 development letter, OWCP advised appellant of the deficiencies of his claim and instructed him as to the factual and medical evidence necessary to establish his claim. It provided him a questionnaire for completion and afforded him 30 days to submit the necessary evidence.

In a February 1, 2017 medical report, Dr. Hwei-Ju Annie Yu, a Board-certified internist, evaluated appellant for thigh tightness and numbness in his fingers after a January 2, 2017[2] fall onto his right side. Appellant also reported that he fell the day prior and that he experienced a loss of balance and felt unsteady while walking down the street. Dr. Yu diagnosed bilateral thigh pain and referred him for an x-ray scan. In a diagnostic report of even date, Dr. Kenneth Reiner, a Board-certified radiologist, performed an x-ray of appellant's right hip, noting no acute fractures and degenerative changes in the lower lumbar spine.

In a March 13, 2017 diagnostic report, Dr. Lauren Peng, a Board-certified radiologist, performed a magnetic resonance imaging (MRI) scan of appellant's lumbar spine, finding mild-to-moderate central canal stenosis at L2-3, L4-5. She also noted lateral recess compression at right L2-3, right L4-5 and right L5-S1 as well as multilevel neural foraminal narrowing.

In diagnostic reports dated March 14, 2017, Dr. Caroline Fong, a Board-certified radiologist, performed a computerized tomography (CT) scan and an MRI scan of appellant's cervical spine, observing moderate-to-severe spinal canal stenosis at C3/C4. In a diagnostic report of even date, Dr. Jingtian Wang, a Board-certified radiologist, reviewed a February 15, 2017 electromyography (EMG) scan of appellant's upper extremities, finding electrodiagnostic evidence of axonal sensory neuropathy of the bilateral upper extremities.

In a March 21, 2017 medical report, Dr. Richard Mehlman, a Board-certified internist, evaluated appellant for severe back and neck pain. He noted that appellant had previously fallen at least 10 times over the past few weeks and that his symptoms worsened after his January 3, 2017 fall. Dr. Mehlman diagnosed essential hypertension and spinal stenosis of the lumbar and cervical spine. He opined that rapid progression of the symptoms associated with the spinal stenosis of the cervical spine were possibly aggravated by a mechanical fall.

[2] Dr. Yu indicated that appellant's fall occurred on January 2, 2017, however this appears to be a typographical error.

In a March 28, 2017 medical report, Dr. Wang observed that appellant had experienced tingling of the hand and imbalance after a mechanical fall on his right side at work on January 3, 2017. Upon review of an MRI scan of his cervical spine, he diagnosed cervical spinal stenosis and referred appellant to be seen by the neurosurgery department.

In a March 30, 2017 diagnostic report, Dr. Keith Terasaki, a Board-certified radiologist, performed an x-ray scan of appellant's lumbar spine, noting moderate-sized osteophytes present anteriorly at the L2 and L4 levels, mild narrowing at the L5-S1 disc space and facet hypertrophy bilaterally at the L5-S1 level. In a separate diagnostic report of even date, Dr. Corine Yee, a Board-certified radiologist, performed an x-ray scan of appellant's cervical spine, observing mild-to-moderate disc space narrowing at C6-C7 and anterior spurring with bridging of the osteophytes from C4-C5 to C6-C7.

In a March 30, 2017 medical report, appellant informed Dr. Terry Ganocy, a Board-certified orthopedic surgeon, that he faced difficulty walking, stiffness in his thighs and tingling in his bilateral hands since a fall on January 3, 2017 where he fell on his right side. Dr. Ganocy observed facet arthropathy along the entire cervical spine, worse at C3-C4, mild-to-moderate disc space narrowing at C5-C6 and moderate narrowing at C6-C7. He referred appellant to a neurosurgeon for surgical evaluation. In a separate medical report of even date, Dr. Shayan Rahman, a Board-certified neurosurgeon, reviewed appellant's diagnostic studies and diagnosed moderate myelopathy from cervical stenosis. She discussed the pathophysiological and natural history of cervical spondylotic myelopathy and explained the importance of avoiding falls or sudden jerky movements such as the ones that can occur in a motor vehicle accident.

In an April 7, 2017 medical report, Dr. Yu indicated that she previously evaluated appellant on February 1, 2017 for bilateral thigh tightness and clarified that his fall occurred on January 3, 2017.

In an April 8, 2017 letter, Dr. Carmine Robinson, a Board-certified neurologist, recounted the history of appellant's claimed January 3, 2017 employment injury in which he bent over and fell at work. Over the next few days appellant began to experience right leg pain, tightness in his upper legs and pain and tingling in the fingers of both hands. By February 2017 appellant experienced stiffness, difficulty walking and decreased sensation in both hands. He also complained of right-sided lumbosacral back pain. On review of appellant's medical history and diagnostic studies, Dr. Robinson noted no history of neurological problems. He opined that appellant's symptoms were consistent with a compression of his cervical spinal cord and an exacerbation of his cervical spinal stenosis. Dr. Robinson explained that, prior to the January 3, 2017 fall, he experienced no symptoms and that developing an acute gait and sensory symptoms after a fall was not uncommon.

In response to OWCP's questionnaire, appellant submitted an April 17, 2017 statement wherein he described the effects of the January 3, 2017 fall when he fell on his right side and back. He provided that after his initial fall he experienced a sharp pain on his right side and subsequently fell multiple times due to his right leg giving out, which had never been a problem prior to his January 3, 2017 fall. Appellant stated that his fall aggravated his preexisting cervical spinal stenosis and that he was not aware of his condition as he had not experienced any symptoms prior to his fall.

By decision dated June 13, 2017, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish that appellant's diagnosed condition was causally related to the accepted January 3, 2017 employment incident.

OWCP continued to receive evidence. In a June 15, 2017 medical report, Dr. Rahman indicated that appellant underwent a cervical laminectomy two months prior to treat his condition and reviewed a post-operative plan for him going forward.

In a December 15, 2017 medical report, Dr. Wang performed a neurological examination of appellant, finding that his condition was consistent with his history of cervical myelopathy. He prescribed medication for appellant's spinal stenosis and thigh muscle stiffness.

In a December 18, 2017 diagnostic report, Dr. Arthur Wong, a Board-certified radiologist, performed an MRI scan of appellant's cervical spine, finding interval laminectomies at the C2-3 and C3-4 levels which resulted in decompression of the cervical spinal cord at C3-4. He also noted moderate bilateral foraminal narrowing at C2-3, high-grade foraminal stenosis at C3-4, high-grade foraminal narrowing at C4-5, moderate left and severe right foraminal narrowing at C5-6, severe right foraminal narrowing at C6-7 and no high-grade canal stenosis at any level. In a separate diagnostic report of even date, Dr. Wong performed an MRI scan of appellant's lumbar spine, observing focal disc herniation at T12-L1 and L1-2 as well as disc bulging and osteophyte complexes at the mid-to-lower lumbar levels.

In medical reports dated from February to March, 29, 2018, Dr. Lisa B. Firestone, a Board-certified in physiatrist, evaluated appellant in relation to his spinal stenosis of the cervical and lumbar spine, neuropathy and history of cervical spine surgery. She prescribed medication for appellant to take and advised for him to continue his physical therapy treatment.

In an April 12, 2018 medical report, Dr. Rahman evaluated appellant a year post surgery. He noted significant improvement in appellant's myelopathy as a result of his fall at work that was likely in the setting of chronic cervical stenosis. Dr. Rahman advised that he was able to resume normal activity.

In attending physician's supplementary reports dated April 16 and April 26, 2018, Dr. Bhavesh Robert J. Pandya, a Board-certified internist, checked a box marked "Yes" to indicate his opinion that appellant's condition was caused by his January 3, 2017 employment injury. He observed that appellant experienced ongoing neck and low back pain due to stenosis that predated his fall and that he underwent surgery for his cervical stenosis about a year prior on May 1, 2017. Dr. Pandya also noted that he experienced periodic low back pain due to stenosis and lumbosacral radiculitis dating back to 2013 per a review of his medical records. He diagnosed paresthesia, spinal stenosis of the cervical and lumbar spine, a history of cervical spine surgery, thoracic disc herniation, lumbar disc herniation with radiculopathy and a right hip contusion. Dr. Pandya provided that, based on a review of appellant's medical records, it appeared more likely than not that his conditions were caused by the January 3, 2017[3] employment incident. He observed that the medical evidence only reflected one instance related to a lumbar condition in 2013 and that

[3] Dr. Pandya provided that the employment incident occurred on January 2, 2017; however, this appears to be a typographical error.

appellant appeared to have achieved functional capacity sufficient to continue his normal duties since that time. Appellant had no prior visit for his cervical spine condition until after the January 3, 2017 employment incident. Dr. Pandya explained that, although spinal stenosis was a slow and progressive condition, it appeared likely that his fall lead to an industrial aggravation of his condition where he began to experience more pain.

On April 26, 2018 appellant requested reconsideration of OWCP's June 13, 2018 decision.

Appellant submitted a May 15, 2017 operative report in which Dr. Rahman indicated that he performed a C3-C5 laminectomy procedure to treat appellant's cervical stenosis.

In a May 21, 2018 development letter, OWCP advised appellant of the deficiencies of his claim and instructed him as to the factual and medical evidence necessary to establish his claim. It provided him with a questionnaire for completion and afforded 30 him days to submit the necessary evidence.[4]

In response to OWCP's questionnaire, appellant submitted a June 11, 2018 statement where he again recounted the events of the January 3, 2017 employment incident in which he fell in his office and stated that he had no prior medical conditions that would have caused him to fall. He clarified that his subsequent falls after January 3, 2017 were all "soft falls" in which he was getting up off the bed or a couch and would fall back into a sitting position that did not cause any injury to him. Appellant also provided comments concerning his medical treatment from his multiple treating physicians.

By decision dated October 5, 2018, OWCP denied modification of its June 13, 2018 decision.

On March 15, 2019 appellant requested reconsideration of OWCP's October 5, 2018 decision. In support of his request, appellant submitted copies of medical evidence already present in the case record.

By decision dated July 22, 2019, OWCP denied modification of its October 5, 2018 decision.

On March 21, 2020 appellant requested reconsideration of OWCP's July 22, 2019 decision.

In an April 21, 2020 attending physician's supplementary report, Dr. Pandya recounted his history of treatment and opined that his injury was caused by the January 3, 2017 employment incident. He noted that it appeared that appellant had suffered significant functional decline after his initial injury beyond what would have been expected due to his underlying medical conditions affecting his cervical and lumbar spine.

By decision dated June 22, 2020, OWCP denied modification of its July 22, 2019 decision.

[4] OWCP also sent separate development letters dated May 22, 2018 to Drs. Yu and Mehlman seeking clarification of their examination of appellant on February 1 and March 21, 2017, respectively. No response was received.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,[5] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[6] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[7]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.[8] First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time and place, and in the manner alleged.[9] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[10]

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence sufficient to establish such causal relationship.[11] The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[12]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[13]

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[5] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[8] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[9] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[10] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

[11] *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

[12] *I.J.*, 59 ECAB 408 (2008).

[13] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *see also O.R.*, Docket No. 20-1518 (issued November 17, 2022).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted January 3, 2017 employment incident.

In his attending physician's supplementary reports dated from April 16, 2018 to April 21, 2020, Dr. Pandya reviewed appellant's history of medical treatment in relation to his lumbar and cervical spine conditions and diagnosed paresthesia, spinal stenosis of the cervical and lumbar spine, a history of cervical spine surgery, thoracic disc herniation, lumbar disc herniation with radiculopathy and a right hip contusion. He observed that, before the January 3, 2017 employment incident, appellant's only treatment related to a lumbar condition was in 2013 and since then it appeared that he had achieved functional capacity sufficient to continue his normal duties. Dr. Pandya also noted that he had no prior visit for his cervical spine condition until after the January 3, 2017 employment incident. He opined that appellant's diagnosed lumbar and cervical conditions were aggravated by the accepted employment incident and explained that, although spinal stenosis was a slow and progressive condition, it appeared likely that his fall lead to an industrial aggravation of his condition where he began to experience more pain. Although Dr. Pandya opined that appellant's lumbar and cervical conditions were aggravated by the accepted January 3, 2017 employment incident, he did not explain how the accepted employment incident caused or aggravated the diagnosed conditions.[14] Furthermore, the Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury, without adequate rationale, is insufficient to establish causal relationship.[15] This evidence is therefore insufficient to establish the claim.

Similarly, in an April 8, 2017 letter, Dr. Robinson opined that appellant's symptoms were consistent with an exacerbation of his cervical spinal stenosis and explained that, prior to the January 3, 2017 fall, appellant experienced no symptoms related to his current condition. However, without explaining how appellant falling on his right side and back caused or aggravated his medical conditions, Dr. Robinson's opinion is of limited probative value.[16]

In his March 21, 2017 medical report, Dr. Mehlman noted that appellant had previously fallen at least 10 times over the past few weeks and that his symptoms worsened after his January 3, 2017 fall. Dr. Mehlman diagnosed spinal stenosis of the lumbar and cervical spine and opined that rapid progression of the symptoms associated with the spinal stenosis of the cervical spine were possibly aggravated by a mechanical fall. While he provided an affirmative opinion on causal relationship, Dr. Mehlman did not offer any medical rationale sufficient to explain how and why he believes the January 3, 2017 employment incident could have resulted in or contributed to appellant's diagnosed condition. Without explaining how falling on his right side and back caused or contributed to appellant's injury, Dr. Mehlman's March 21, 2017 medical report is of limited

[14] *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *C.J.*, Docket No. 18-0148 (issued August 20, 2018); *Franklin D. Haislah*, 52 ECAB 457 (2001).

[15] *R.V.*, Docket No. 18-1037 (issued March 26, 2019); *M.R.*, Docket No. 14-0001 (issued August 27, 2014).

[16] *See A.P.*, Docket No. 19-0224 (issued July 11, 2019).

probative value.[17] Additionally, his statement that the rapid progression of appellant's symptoms associated with his spinal stenosis of the cervical spine were "possibly" aggravated by a mechanical fall is speculative and equivocal, and thus insufficient to establish appellant's burden of proof.[18] Further, the Board has consistently held that complete medical rationalization is particularly necessary when there is a preexisting condition involving the same body part,[19] and has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition in such cases.[20] For these reasons, Dr. Mehlman's March 21, 2017 medical report is insufficient to meet appellant's burden of proof.

In her March 30, 2017 medical report, Dr. Rahman reviewed appellant's diagnostic studies and diagnosed moderate myelopathy from cervical stenosis. She discussed the pathophysiological and natural history of cervical spondylotic myelopathy and explained the importance of avoiding falls or sudden jerky movements such as the ones that can occur in a motor vehicle accident. However, without explaining how falling on his right side and back caused or aggravated appellant's condition, Dr. Rahman's March 30, 2017 medical report is insufficient to meet appellant's burden of proof.[21]

In her February 1, 2017 medical report, Dr. Yu related appellant's symptoms of thigh tightness and numbness in his fingers after the January 3, 2017 employment incident. On evaluation she diagnosed bilateral thigh pain. However, Dr. Yu did not provide an opinion regarding causal relationship. The Board has held that a report that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.[22] Therefore, Dr. Yu's February 1, 2017 medical report is insufficient to establish the claim.

Appellant submitted medical evidence dated from March 28, 2017 to April 12, 2018 from Drs. Wang, Ganocy, Yu, Rahman, and Firestone in which they discussed his treatment for his diagnosed lumbar and cervical spine conditions in relation to the January 3, 2017 employment incident. However, these physicians did not offer an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's

[17] *See A.P.*, Docket No. 19-0224 (issued July 11, 2019).

[18] The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value. *R.C.*, Docket No. 18-1695 (issued March 12, 2019); *see Ricky S. Storms*, 52 ECAB 349 (2001) (While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

[19] *K.R.*, Docket No. 18-1388 (issued January 9, 2019).

[20] *See e.g.*, *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *J.B.*, Docket No. 17-1870 (issued April 11, 2018); *E.D.*, Docket No. 16-1854 (issued March 3, 2017); *P.O.*, Docket No. 14-1675 (issued December 3, 2015).

[21] *Supra* note 20.

[22] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

condition or disability is of no probative value on the issue of causal relationship.[23] This evidence is therefore insufficient to meet appellant's burden of proof.

The remaining medical evidence of record consists of diagnostic reports dated from February 1 to December 18, 2017. The Board has held, however, that diagnostic test reports, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between accepted employment incident and a diagnosed condition.[24] For this reason, the remaining medical evidence is insufficient to meet appellant's burden of proof.

As appellant has not submitted rationalized medical evidence establishing that his diagnosed lumbar and cervical spine conditions are causally related to the accepted January 3, 2017 employment incident, the Board finds that he has not met his burden of proof to establish his claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted January 3, 2017 employment incident.

[23] *Id*.

[24] *See W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

ORDER

IT IS HEREBY ORDERED THAT the June 22, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 27, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board